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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, from 27 March–5 April 2023

Opinion No. 8/2023 concerning Khurram Parvez (India)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,[1] on 13 December 2022 the Working Group transmitted to the Government of India a communication concerning Khurram Parvez. The Government did not reply to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

[1] A/HRC/36/38.

Submissions

Communication from the source

4. Khurram Parvez, is a national of India, born in 1977; his usual place of residence is Srinagar, Jammu and Kashmir (union territory).

5. The source submits that Mr. Parvez is a coordinator of the Jammu and Kashmir Coalition of Civil Society and the Association of Parents of Disappeared Persons; Chairperson of the Asian Federation Against Involuntary Disappearances; and distinguished scholar with the Political Conflict, Gender and People's Rights Initiative at the Center for Race and Gender at the University of California, Berkeley.

6. According to the source, on 22 November 2021, officials from the National Investigation Agency, under the Ministry of Home Affairs, assisted by local police, conducted simultaneous raids on the house of Mr. Parvez and the office of the Jammu and Kashmir Coalition of Civil Society in the city of Srinagar, Jammu and Kashmir (union territory). The raids started in the early morning hours of 22 November 2021 and lasted for approximately 14 hours, until about 6 p.m. that day.

7. The source submits that during the raids, Mr. Parvez's mobile phone, laptop and several books were seized. Furthermore, during the raid on his residence, the authorities took Mr. Parvez into custody for what the authorities told his family would be routine questioning at the premises of the National Investigation Agency in Srinagar.

8. At around 6 p.m. on 22 November 2021, one of Mr. Parvez's relatives of received a phone call from an officer of the National Investigation Agency who requested that a member of his family bring him clothes at the Agency's office. Upon arrival, the family members were given an arrest memo issued on the basis of a first information report (No. RC-30/2021/NIA/DLI) filed by the National Investigation Agency on 6 November 2021. The arrest memo stated that Mr. Parvez had been arrested at 5.55 p.m. on 22 November 2021.

9. The source notes that while family members were told that Mr. Parvez would be transferred to Delhi the following day, he was not taken there until two days later, on 24 November 2021.

10. The source submits that Mr. Parvez has been continuously detained since 22 November 2021. Since that time, he has been transferred multiple times between various places of detention, namely: the offices of the National Investigation Agency in Srinagar, Jammu and Kashmir (union territory) (from 22 to 24 November 2021); the offices of the National Investigation Agency in New Delhi, (from 24 November to 4 December 2021); Tihar maximum security prison, New Delhi (from 4 to 10 December 2021); Rohini Prison Complex, Delhi (from 10 December 2021 to 21 February 2022); the offices of the National Investigation Agency, New Delhi (from 21 to 25 February 2022); and Rohini Prison Complex, Delhi (from 25 February 2022 until the present time).

11. According to the source, Mr. Parvez was arrested on multiple fabricated charges related to criminal conspiracy and terrorism. He has been accused of being in contact with individuals linked to a Pakistan-based armed militant group named Lashkar-e-Tayyiba.

12. According to the arrest memo given to Mr. Parvez's family on the night of his arrest on 22 November 2021 and the first information report on which it was based, Mr. Parvez was arrested on charges under the Indian Penal Code and the Unlawful Activities (Prevention) Act. Specifically, he was charged under section 121 ("Waging, or attempting to wage war, or abetting waging of war, against the Government of India"), section 121A ("Conspiracy to commit offences punishable by section 121") and section 120B ("Punishment of criminal conspiracy") of the Indian Penal Code and section 17 ("Punishment for raising funds for terror activities"), section 18 ("Punishment for conspiracy"), section 18B ("Punishment for recruiting any person or persons for terrorist act"), section 38 ("Offence relating to membership of a terrorist organization") and section 40 ("Offence of raising funds for a terrorist organization") of the Unlawful Activities (Prevention) Act.

13. Moreover, according to the preliminary charge sheet filed by the National Investigation Agency before its special court in New Delhi on 13 May 2022, Mr. Parvez has

been detained on charges under the Indian Penal Code and the Unlawful Activities (Prevention) Act, namely sections 121A and 120B and of the Indian Penal Code, section 8 of the Prevention of Corruption Act ("Offence relating to bribing of a public servant") and sections 13 ("Punishment for unlawful activities"), 18, 18B, 38 and 39 ("Offence relating to support given to a terrorist") of the Unlawful Activities (Prevention) Act.

14. The source notes that the above-mentioned charges were filed by the National Investigation Agency on 13 May 2022. It further specifies that the charges from the arrest memo that was handed to Mr. Parvez's family on 22 November 2021 that were not included in the preliminary charge sheet include: section 121 of the Indian Penal Code, sections 17 and 40 of the Unlawful Activities (Prevention) Act. Additional charges that were not included in the arrest memo and were included in the preliminary chargesheet are: section 8 of the Prevention of Corruption Act, and sections 13 and 39 of the Unlawful Activities (Prevention) Act.

15. The source explains that offences under sections 120A and 121B of the Indian Penal Code are non-bailable. Similarly, section 43D (5) ("Modified application of certain provisions of the Code") of the Unlawful Activities (Prevention) Act precludes bail for individuals accused of offenses under chapters IV and VI of the Act if the Court holds that there are reasonable grounds for believing that the accusation against such person is prima facie true.

16. According to the source, the special court of the National Investigation Agency in Delhi filed preliminary charges against Mr. Parvez under the following sections of the Unlawful Activities (Prevention) Act: section 13 (chapter III), sections 18–18B (chapter IV) and sections 38–39 (chapter VI).

17. The source also notes that until the preliminary charge sheet was filed on 13 May 2022, Mr. Parvez's detention was extended five times under section 43D (2) (b) of the Unlawful Activities (Prevention) Act, which allows for the extension of the detention period for up to 180 days should the National Investigation Agency be unable to complete the investigation of a case within a period of 90 days. This investigation phase ended when the preliminary charge sheet was filed.

18. According to the source, if tried and convicted on all charges cited in the preliminary charge sheet and sentenced to the full extent of the law, Mr. Parvez faces up to life imprisonment (under sections 121A and 120B of the Indian Penal Code and section 18B of the Unlawful Activities (Prevention) Act) and the death penalty (under section 120 B of the Indian Penal Code).

Legal analysis

19. The source submits that the deprivation of liberty of Mr. Parvez is arbitrary and falls under categories II and III of the Working Group.

20. In relation to category II, the source recalls that article 26 of the Covenant states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any grounds, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

21. It is argued that the investigation, arrest, detention and prosecution of Mr. Parvez constitute a violation of his right to equality before the law because he has been discriminated against in reprisal for his human rights work.

22. According to the source, Mr. Parvez has been active in human rights work in the Kashmir Valley region since 1996 and has long been a vocal critic of the Government. In 2000, Mr. Parvez co-founded the Jammu Kashmir Coalition of Civil Society, which publishes reports on alleged human rights violations committed in Jammu and Kashmir, including information on mass graves, enforced disappearances, torture, extrajudicial killings, sexual violence and freedom of expression violations, as well as violations committed by security forces. Mr. Parvez currently serves as programme coordinator of the organization. He is also the Chairperson of the Asian Federation Against Involuntary Disappearances, an

international human rights organization that provides assistance to alleged victims of enforced disappearances throughout Asia. Mr. Parvez is also the coordinator of the Association of Parents of Disappeared Persons, an organization that advocates for an end to the practice and crime of involuntary and enforced disappearances at the local, national and international levels. Members of the Association have been engaging in documenting enforced disappearances in Kashmir since 1989 and have collected information on over 1,000 such cases.

23. The source notes that Mr. Parvez has worked to expose human rights violations in Jammu and Kashmir, documenting cases of enforced disappearances and investigating unmarked graves. His work has been cited by various Governments and the United Nations, including in the report on the situation of human rights in Kashmir by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Moreover, in response to the arrest of Mr. Parvez in November 2021, the Special Rapporteur on the situation of human rights defenders has explicitly recognized him as a human rights defender.

24. The source argues that the legitimate human rights activities of Mr. Parvez must be considered prohibited grounds for discrimination. This determination is clearly supported by the jurisprudence of the Human Rights Committee.[2] In December 2021, a group of independent United Nations experts stated that the deprivation of his liberty through his arrest appeared to be another retaliation "for his legitimate activities as a human rights defender and because he has spoken out about violations".[3]

25. Additionally, it is noted that the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, although not legally binding in itself, acts as a guide to the interpretation of other legally binding international legal instruments, including the Covenant.

26. Article 11 of the Declaration states that everyone has the right, individually and in association with others, to the lawful exercise of his or her profession. It is argued that in relation to the arrest, detention and prosecution of Mr. Parvez, it is apparent that he, as a human rights defender, has been deprived of his right to carry out legitimate human rights work.

27. Furthermore, the source recalls that article 12 (2) of the Declaration states that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. It is argued that, in this case, the authorities have not only failed in their duty to take the necessary measures to prevent and halt the discrimination against Mr. Parvez in relation to his legitimate human rights work but have also actively participated in these actions through the politically motivated misuse of the criminal justice system.

28. Moreover, the source submits that the current deprivation of liberty of Mr. Parvez must also be considered to have resulted from the exercise of universally recognized human rights, in particular the rights to freedom of expression and freedom of association, which are guaranteed by articles 19 and 22 of the Covenant, respectively, through the criminalization of legitimate activities by human rights defenders and human rights organizations, including the documentation of human rights violations committed by State actors, the reporting of such violations by the media and United Nations human rights mechanisms and the participation in advocacy activities in international forums.

29. It is noted that Mr. Parvez's arrest also forms part of a broader attack on the Jammu and Kashmir Coalition of Civil Society and the Association of Parents of Disappeared Persons as organizations.

[2] Human Rights Committee, general comment No. 18 (1989), para. 12.

[3] See https://www.ohchr.org/en/press-releases/2021/12/un-experts-urge-indian-authorities-stop-targeting-kashmiri-human-rights.

30. The source recalls that the current deprivation of liberty of Mr. Parvez is not the first time he has been targeted by the authorities with the aim of punishing and intimidating him for his human rights activities. On 28 October 2020, his house was searched by the National Investigation Agency, along with the houses and offices of several other human rights defenders, non-governmental organizations (NGOs) and newspapers in Srinagar and Bandipora. The National Investigation Agency reportedly stated that the raids were conducted in connection with an investigation into the fundraising of so-called NGOs and trusts in India and abroad to carry out secessionist and terrorist activities in Jammu and Kashmir, pursuant to sections 120 B and 124 A ("Sedition") of the Indian Penal Code and sections 17, 18, 22A ("Offences by companies"), 22C ("Punishment for offences by companies, societies or trusts"), 38, 39 and 40 of the Unlawful Activities (Prevention) Act.

31. In connection with this case, on 27 March 2022, officers of the National Investigation Agency, assisted by the local police, raided Mr. Parvez's residence in the Sonwar Bagh area of Srinagar, seizing unrevealed documents related to financial transactions.

32. Previously, in September 2016, Mr. Parvez was arrested without a warrant and detained for 76 days without charge under the Public Safety Act. He was released only when the Jammu and Kashmir High Court overturned his detention order, terming it illegal and an abuse of power. His arrest reportedly came two days after he was stopped at the airport in Delhi by immigration authorities and prevented from travelling to Geneva to attend the thirty-third session of the Human Rights Council.

33. The source notes that reprisals against Mr. Parvez and the Jammu and Kashmir Coalition of Civil Society for cooperating with OHCHR have been noted in the 2017, 2018, 2019 and 2021reports of the Secretary-General on allegations of reprisals.[4]

34. The source recalls that in July 2019, the Unlawful Activities (Prevention) Act was amended. The amendments significantly increased the reach of the Act. According to the source, the expansion of the reach of the Act has enabled the Government to use the law to arbitrarily detain human rights defenders and to silence critics, particularly through the broad definition of "unlawful activity" in section 2 (1) (o) of the Act, "in relation to such individual or association (whether by committing an act or by words, either spoken or written, or by signs or visible representation or otherwise)", which causes or is intended to cause disaffection against India.

35. In this connection, the source also recalls that on 6 May 2020, nine special procedures mandate holders wrote to the Government of India to express their concern over the Unlawful Activities (Prevention) Act, including its section 43D, and its lack of compliance with international human rights law, including the Covenant.[5]

36. The source states that United Nations and human rights organizations have documented trends by the Government to target human rights defenders, political activists and journalists through the use of terrorism charges and accusations, similar to those levelled against Mr. Parvez, in an effort to silence and intimidate any critical voices or political dissent. According to the source, there are currently at least 29 human rights defenders incarcerated under the Unlawful Activities (Prevention) Act across the country. The source argues that these cases illustrate the Government's systematic use of the Act to target human rights defenders for the legitimate exercise of their rights to freedom of expression and freedom of association.

37. In relation to category III, the source recalls several international human rights norms in respect of the fundamental rights to liberty and to a fair trial, which are guaranteed by articles 9 and 14 of the Covenant, respectively.

38. The source recalls article 9 of the Covenant, which states that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable

[4] A/HRC/36/31, paras. 36; A/HRC/39/41, annex II, paras. 23–24; A/HRC/42/30, para. 58, and annex II, para. 59; and A/HRC/48/28, annex II, paras. 62–64.

[5] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25219.

time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgment.

39. It is further recalled that section 43D (2) (b) ("Modified application of certain provisions of the Code") of the Unlawful Activities (Prevention) Act modified section 167 ("Procedure when investigation cannot be completed in twenty-four hours") of the 1973 Indian Code of Criminal Procedure by allowing the courts to extend the investigation phase to up to 180 days, as opposed to the 90 days for offences listed under the Indian Penal Code. The source submits that, as a result of that provision, Mr. Parvez was not afforded a trial within a reasonable time. A charge sheet was released after 173 days of detention and the first hearing on the preliminary charges took place on 6 July 2022, more than seven months after Mr. Parvez was arrested.

40. Moreover, the source also recalls that section 43D (5) of the Unlawful Activities (Prevention) Act precludes bail for individuals accused of offenses under chapters IV and VI if the court holds that there are reasonable grounds for "believing that the accusation against such person is prima facie true". On 22 August 2022, during his second court hearing, Mr. Parvez's legal team filed an application for bail. The third hearing took place on 3 September 2022 and the fourth on 11 October 2022. The fifth hearing was scheduled to take place on 24 November 2022, having been postponed from the initial date of 5 November 2022.

41. The source concludes that from the time of his arrest on 22 November 2021 until the filing of the preliminary charge sheet against him by the National Investigation Agency on 13 May 2022, Mr. Parvez was detained for 173 days. During that time, Mr. Parvez's detention was extended five times under section 43D (2) (b) of the Unlawful Activities (Prevention) Act. On 4 December 2021, the first extension was granted for 20 days. On 23 December 2021, his detention was extended for 30 days, and subsequently for an additional 40 days on 12 January 2022, an additional 40 days on 12 February 2022 and another 50 days on 24 March 2022. The offences that Mr. Parvez is charged with under the Indian Penal Code are non-bailable. The possibility for Mr. Parvez of being granted bail by the court for offences under the Unlawful Activities (Prevention) Act is extremely unlikely.

42. The source adds that the Supreme Court of India has held that courts cannot examine the substance of such cases or any evidence from the defendant in considering bail. Effectively, a court may only grant bail in such cases if the National Investigation Agency itself fails to establish a prima facie case. As a consequence, many defendants charged under the Unlawful Activities (Prevention) Act spend years in jail without a meaningful opportunity to obtain bail. Some of the defendants have been awarded bail after prolonged detentions. It is noted that, in practice, cases under the Unlawful Activities (Prevention) Act have taken more than three years to conclude and some have taken up to 15 years from the time of arrest. In addition, the source notes that, in practice, some judges in such cases have been known to limit the number of times they will consider applications for bail.

43. The source further submits that Mr. Parvez was denied access to his legal counsel. In this context, it recalls article 14 (3) (b) of the Covenant, which provides that a defendant is entitled to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. Defendants must have access to documents and other evidence, including all materials that the prosecution plans to offer in court against the accused or that could assist the defence.[6] It further requires that defendants be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.[7] Internationally recognized human rights standards require that any individuals charged with a criminal offence not wishing to defend themselves must be able to have recourse to legal assistance of their own choosing from the early days of the proceedings.[8]

[6] Human Rights Committee, general comment No. 32 (2007), para. 33.

[7] Ibid., para. 34.

[8] See European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (criminal limb)*, 31 August 2020, para. 476.

44. The source also recalls that the Working Group has specified that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access must be provided without delay.

45. It is submitted that Mr. Parvez's right to legal counsel was denied during his initial arrest and interrogation by the National Investigation Agency in November 2021. As such, it is argued that Mr. Parvez did not have lawyers present during his initial interrogation by the Investigation Agency on 22 November 2021 or during subsequent multiple interrogations until 24 November 2021, after he was transferred to Delhi and his lawyers were able to file an application to grant legal counsel.

46. The source notes that the right to counsel during interrogation is particularly important in order to guarantee that the accused does not provide self-incriminating evidence and that the authorities refrain from using coercive measures, including torture and other forms of cruel and degrading treatment. Moreover, this denial has meant that Mr. Parvez was not able to adequately challenge his detention and prepare his defence on the allegations brought against him. The inability of Mr. Parvez to be aided by his legal counsel following his arrest and the practical implications of depriving him of the ability to mount an effective defence amount, according to the source, to a violation of article 14 of the Covenant.

47. Furthermore, it is argued that Mr. Parvez's transfer from Srinagar to Delhi could amount to violations of his fair trial rights. The source explains that this relocation gave Mr. Parvez less access to his family and has further isolated him while in pretrial detention. Additionally, collecting evidence and devising a defence plan may be obstructed and delayed as the prosecution's case relates to Kashmir. It is argued that, assuming that defence witnesses in this case will primarily be based in Kashmir, detention and trial in Delhi will inevitably render it more expensive and more difficult to mount an effective defence. It is also likely to cause delays owing to the unavailability of witnesses.

48. The source also submits that the level of privacy and time permitted for Mr. Parvez to meet and consult with his lawyers are inadequate. Prison rules allow for a 30-minute legal interview once a week between lawyers and clients. The timing of the meeting, if done in person, is limited. Moreover, the paperwork required to organize such a meeting renders it a difficult and cumbersome process. Legal interviews are also allowed by video conference. According to the source, this is rarely an efficient process, requiring repeated requests on the part of lawyers to prison staff to be allotted a slot with their clients, and lawyers are often forced to approach the trial court for directions. In addition, there are frequent issues with Internet connectivity.

49. Moreover, privacy of communications is reportedly a significant and ongoing concern. In both physical and online interviews, prison staff are technically not permitted to overhear or record the conversations but often staffers remain in close proximity and there is no guarantee that videoconference interviews are not recorded by the authorities.

50. The source further argues that Mr. Parvez has been denied of the right to be presumed innocent until proven guilty. In this regard, the source recalls that under the article 14 (2) of the Covenant, article 11 (1) of the Universal Declaration of Human Rights and principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, every citizen has the right to be presumed innocent.

51. It is also recalled that the Human Rights Committee has stated that the burden of proof of the charge is on the prosecution and that the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. The presumption of innocence implies a duty for all public authorities to refrain from prejudging the outcome of a trial.[9]

52. The source stresses that under international law, defendants charged with crimes are presumed to be innocent. The burden of proof to establish the guilt of the accused lies with the Prosecutor, and public authorities must refrain from prejudging the outcome of the

[9] Human Rights Committee, general comment No. 13 (1984), para. 7.

proceedings,[10] making any official statements or using conclusory language that would portray an accused individual as being guilty.[11]

53. In this context, the source reiterates that Mr. Parvez was arrested, detained and subsequently charged under the Unlawful Activities (Prevention) Act, in violation of his right to be presumed innocent. Through multiple extensions of detention based on section 43D (2) (b) of the Unlawful Activities (Prevention) Act, Mr. Parvez was held for 173 days before the charge sheet was filed. As a result, the source argues that the Act allows for individuals, who may later be found to be innocent, to be arbitrarily detained for extensive periods of time.

54. The source recalls that in their May 2020 communication to the Government of India, United Nations special procedures mandate holders expressed their concern that the Unlawful Activities (Prevention) Act constitutes a serious encroachment on the right to the presumption of innocence and the right against self-incrimination because arrestees must show the absence of reasonable grounds, notwithstanding that they will not know the grounds for arrest proffered by the State.[12]

55. Finally, in the context of category III, the source argues that there has been a violation of Mr. Parvez's right to be promptly brought before a judge. It recalls that due process under article 9 (3) of the Covenant guarantees the right of an arrested person or a detainee to be promptly brought before a judge or other officer authorized to exercise judicial power. This requirement applies in all cases without exception, even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.[13] This right is also enshrined in article 9 of the Universal Declaration of Human Rights and principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Human Rights Committee interprets the term "promptly" to be within about 48 hours, except in exceptional circumstances.[14]

56. The source recalls that Mr. Parvez was arrested on 22 November 2021, but in May 2022 a preliminary charge sheet was filed, which brought additional charges from the arrest memo that was handed to Mr. Parvez' family on 22 November 2021, while some of the charges of the arrest memo were not included. The trial on these charges is yet to commence as a final charge sheet has not been filed by the National Investigation Agency, despite the fact that it is over one year since his arrest. The source concludes that the treatment of Mr. Parvez by the authorities and their failure to afford him rights set forth in the Universal Declaration of Human Rights, the Covenant and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment amounts to a deprivation of liberty under category III.

57. Finally, the source submits that on 23 November 2021, an urgent complaint was submitted to the National Human Rights Commission of India on behalf of Mr. Parvez (case No. 360/9/13/2021). That complaint was subsequently merged with one submitted by the European Union delegation in India (case No. 358/9/13/2021). On 28 January 2022, the National Human Rights Commission ordered the Director General of the Jammu and Kashmir police force to submit a response within four weeks. The source notes that a notice for a response was not issued to the National Investigation Agency, which was the arresting agency.

58. On 28 March 2022, the Jammu and Kashmir police responded, saying that since Mr. Parvez was under custody of the National Investigation Agency, the National Human Rights Commission should take up the matter with parties concerned. The complainant was never provided with the report nor with the opportunity to provide a response to the submission

[10] CCPR/C/101/D/1620/2007/Rev.2, para. 9.6.

[11] CCPR/C/98/D/1520/2006, para. 3.2; CCPR/C/87/D/1421/2005, para. 7.4; and CCPR/C/69/D/770/1997 and CCPR/C/69/D/770/1997/Corr.1, para. 8.3.

[12] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25219, p.10.

[13] CCPR/C/104/D/1914, 1915 and 1916/2009, para. 9.3 (this right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control).

[14] Human Rights Committee, general comment No. 35 (2014), para. 33.

made by the Jammu and Kashmir police. On 14 June 2022, the National Human Rights Commission closed the case, citing as a reason that the case was before the court.

Response from the Government

59. On 13 December 2022, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 13 February 2023, detailed information about the situation of Mr. Parvez and to clarify the legal provisions justifying his detention, as well as its compatibility with the obligations of India under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group further called upon the Government to ensure his physical and mental integrity.

60. The Working Group regrets that it did not receive a response from the Government to that communication.

Discussion

61. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

62. In determining whether the detention of Mr. Parvez is arbitrary, the Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.[15] In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

Category I

63. While the source does not allege that Mr. Parvez's detention falls within category I, in the light of its submissions, the Working Group will nonetheless consider if his detention is arbitrary under category I.

64. The source submits that Mr. Parvez has been continuously detained since 22 November 2022, with multiple transfers between various places of detention, including to a maximum security prison. He is charged, inter alia, with non-bailable offences under sections 120 A and 121 of the Indian Penal Code. The Working Group recalls that it has repeatedly stated in its jurisprudence that, even when the detention of a person is carried out in conformity with national legislation, the Working Group must ensure that the detention is also consistent with the relevant provisions of international law.[16]

65. The Working Group has found that non-bailable offences are in effect mandatory pretrial detention.[17] In its jurisprudence, the Working Group has confirmed that mandatory pretrial detention, in the present case, articles 120A and 121 of the Indian Penal Code, are in violation of a State's obligations under international human rights law.[18] As the Human Rights Committee has stated, pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances, taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.[19] The Working Group recalls the view of the Human Rights Committee, as well as its own recurrent findings, that pretrial detention must be the

[15] A/HRC/19/57, para. 68.

[16] See, for example, opinions No. 46/2011, No. 42/2012, No. 50/2017, No. 79/2017, No. 1/2018, No. 20/2018, No. 37/2018 and No. 50/2018.

[17] Opinions No. 8/2020, paras. 77–78; and No. 14/2022, para. 79.

[18] Opinions No. 57/2014, No. 24/2015, No. 16/2018, No. 53/2018, No. 61/2018, No. 75/2018, No. 14/2019 and No. 64/2019; see also A/HRC/19/57, paras. 48–58; and A/HRC/42/39/Add.1, paras. 36–38.

[19] Human Rights Committee, general comment No. 35 (2014), para. 38.

exception and not the rule, should be ordered for as short a time as possible[20] and must be based on an individualized determination that it is reasonable and necessary.

66. Courts must examine whether alternatives to pretrial detention would render detention unnecessary in the case in question.[21] Mandatory pretrial detention deprives judicial authorities of one of their essential functions as members of an independent and impartial tribunal, namely, assessing the necessity and proportionality of detention in each case. The imposition of mandatory pretrial detention for certain offences undermines the presumption of liberty and reverses the burden of proof, so that those subject to ongoing criminal proceedings are automatically detained without a balanced consideration of non-custodial alternatives to detention.[22] In the present case, the Working Group concludes that an individualized determination of Mr. Parvez's circumstances was absent under articles 120A and 121 of the Indian Penal Code and that, as a result, his detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant and article 9 of the Universal Declaration of Human Rights. The Working Group considers that Mr. Parvez's prolonged pretrial detention illustrates the importance of this fundamental legal principle of personal liberty.

67. Based on the foregoing, the Working Group thus finds that the Government failed to establish a legal basis for Mr. Parvez's detention. His detention is thus arbitrary under category I.

Category II

68. The source submits that Mr. Parvez's deprivation of liberty results from the exercise of his rights to freedom of expression and freedom of association, which are guaranteed by articles 19 and 22 of the Covenant, respectively, through the criminalization of legitimate activities by human rights defenders and human rights organizations, including the documentation of human rights violations committed by State actors, the reporting of such violations through the media and United Nations human rights mechanisms and the participation in advocacy activities in international forums.

69. The Working Group recalls that article 19 (2) of the Covenant provides that everyone has the right to freedom of expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and covers political discourse, commentary on public affairs, discussion of human rights and journalism.[23] The right to freedom of expression protects the holding and expression of opinions, including those that are critical of, or not in line with, government policy.[24] The Human Rights Council has called on States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.[25] In accordance with articles 1 and 6 (c) of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and to draw public attention to the observance of human rights.[26] The Working Group considers that Mr. Parvez's conduct fell within the right to freedom of opinion and expression and freedom of association protected under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the Covenant and that he was detained for exercising these rights. The Working Group is not convinced

[20] See, for example, opinions No. 57/2014, para. 26; No. 8/2020, para. 54; No. 5/2021, para. 43; and No. 6/2021, para. 50; see also A/HRC/19/57, paras. 48–58.

[21] A/HRC/19/57, paras. 48–58.

[22] Human Rights Committee, general comment No. 35 (2014), para. 38; opinion No. 8/2020, para. 78; and United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, guidelines 15 and 18 (the burden of proof must be met in a manner known in detail to the detainee, complete with supporting evidence, including those we are defendants in security-related cases).

[23] Human Rights Committee, general comment No. 34 (2011), para. 11.

[24] See, for example, opinions No. 79/2017, para. 55; and No. 8/2019, para. 55.

[25] Human Rights Council resolution 12/16, para. 5 (p).

[26] General Assembly resolution 74/146, para. 12.

that the permissible restrictions on the rights set out in articles 19 (3) and 22 (2) of the Covenant would apply in the present case and that prosecuting Mr. Parvez was necessary to protect a legitimate interest under these provisions.

70. Moreover, highlighting the broad definition of "unlawful activity" in the Unlawful Activities (Prevention) Act, the source refers to several United Nations experts who have expressed their concern that the vague definition of "unlawful activities" and "membership of terrorist organizations" weakens judicial oversight by conferring discretionary powers upon State agencies and diminishes civil liberties in the process.[27] The experts were also concerned by the designation of individuals in the Unlawful Activities (Prevention) Act as terrorists in the context of ongoing discrimination directed at religious and other minorities, human rights defenders, and political dissidents, against whom the law has been used.[28] The source further notes that the overbroad and ambiguous definition of a "terrorist act" under this law differs substantially from the definition advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. [29] The Working Group recalls that the principle of legal certainty under international law enshrined in article 15 (1) of the Covenant and article 11 (2) of the Universal Declaration of Human Rights require that criminal laws must be sufficiently precise, so it is clear what types of behaviour and conduct constitute criminal offence and what be the consequences of committing such an offence.[30]

71. Based on the above, the Working Group finds that the detention of Mr. Parvez resulted from his legitimate exercise of freedom of opinion, expression and association, as protected by articles 19 and 22 of the Covenant and articles 19 and 20 of the Universal Declaration of Human Rights, and was therefore arbitrary, falling under category II. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

Category III

72. According to the source, Mr. Parvez was arrested on multiple fabricated charges relating to criminal conspiracy and terrorism. The source submits that section 43D (2) (b) of the Unlawful Activities (Prevention) Act modifies section 167 of the 1973 Indian Code of Criminal Procedure by allowing the courts to extend the investigation phase to up to 180 days, as opposed to 90 days for offences listed under the Indian Penal Code. This is a considerable expansion of the length of time a person can be held in custody without a charge. Only when the charge sheet is filed, after 180 days in custody, are detainees provided with any concrete information on the substantive basis of their arrest.[31] Prior to the end of the 180-day period, detainees have no entitlement to bail if there are "reasonable grounds for believing that the accusation against such person is prima facie true" under section 43 D (5) of the Unlawful Activities (Prevention) Act.

73. Mr. Parvez's charge sheet was reportedly released after 173 days of detention and his first hearing on the preliminary charges took place on 6 July 2022, more than seven months after he was arrested. During this time, Mr. Parvez's detention was extended five times under section 43D (2) (b) of the Unlawful Activities (Prevention) Act. The source adds that the Supreme Court has held that courts cannot examine the substance of such cases or any evidence from the defendant in considering bail. In effect, a court may only grant bail in such cases if the National Investigation Agency itself fails to establish a prima facie case. The

[27] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25219, p. 7.
[28] Ibid., p. 1.
[29] See A/HRC/16/51.
[30] See, for example, opinion No. 35/2021, para. 76; and No.75/2021, para. 66.
[31] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25219, p.10.

source further submits that the Unlawful Activities (Prevention) Act allows for individuals who may later be found to be innocent to be arbitrarily detained for extensive periods of time. As such, it appears that the possibility for Mr. Parvez of being granted bail by the court for offences under the Unlawful Activities (Prevention) Act is extremely unlikely. The Working Group is concerned that section 43 D (5) of the Unlawful Activities (Prevention) Act could seriously encroach the right to the presumption of innocence and the right against self-incrimination because detainees will have to show the absence of reasonable grounds, notwithstanding that they will not know the grounds for arrest proffered by the State.[32] Several other human rights experts have also expressed this concern.[33]

74. The Working Group also finds that Mr. Parvez's right to be informed promptly and in detail of the charges against him under article 14 (3) (a) of the Covenant has been violated. The source submits that while Mr. Parvez was arrested on 22 November 2021, it was only in May 2022, that a preliminary charge sheet was filed. His trial is yet to commence. The right to be tried without undue delay is enshrined in article 14 (3) (c) of the Covenant. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was handled by the authorities.[34] The Working Group finds that the delay in bringing Mr. Parvez to trial is unacceptably long, in violation of articles 9 (3) and 14 (3) (c) of the Covenant and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Given the Working Group's finding that Mr. Parvez's detention was arbitrary under category II because it resulted from the peaceful exercise of his rights, any delay in trying his case is unreasonable.[35] The Human Rights Committee has stated that an important aspect of the fairness of a hearing is its expeditiousness, and that in cases where the accused is denied bail by the court, he or she must be tried as expeditiously as possible.[36] The delay in the present case is exacerbated as Mr. Parvez was not given a bail hearing as discussed above.

75. Furthermore, the Working Group considers that the source has prima facie established that Mr. Parvez did not have access to a lawyer from the outset of his detention, that is, following his initial arrest as well as at other key stages, including during his interrogations in Srinagar before his transfer to Delhi. All persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and such access must be provided without delay.[37] The source also alleges that the time permitted for Mr. Parvez to meet and consult with his lawyer is inadequate and that there are considerable practical difficulties in arranging these meetings.

76. The effectiveness of legal counsel is fundamentally related to the principle of equality of arms, as enshrined in article 11 of the Universal Declaration of Human Rights and article 14 of the Covenant, which protects the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of one's own choosing. The failure to provide Mr. Parvez with a lawyer from the outset of his detention, and adequate access to a lawyer, thereafter, seriously impaired his ability to challenge his detention and mount an effective defence. These violations of due process and fair trial rights are all the more egregious considering that Mr. Parvez is facing serious terrorism charges and could potentially be sentenced to death. The Working Group recalls the guidance of the Human

[32] According to the Human Rights Committee, extremely prolonged pretrial detention may also jeopardize the presumption of innocence under article 14, paragraph 2 of the Covenant (Human Rights Committee, general comment No. 35 (2014), para. 37).

[33] See communication IND 7/2020, available from https://spcommreports.ohchr.org/.

[34] Human Rights Committee, general comment No. 35 (2014), para. 37; and general comment No. 32 (2007), para. 35.

[35] Opinions No. 10/2021, para. 78; No. 16/2020, para. 77; and No. 8/2020, para. 75.

[36] See Human Rights Committee, general comment No. 32 (2007), paras. 27–35.

[37] United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8; and Human Rights Committee, general comment No. 35 (2014), para. 35. See also General Assembly resolution 73/181; CCPR/C/IRN/CO/3, para. 21; and A/HRC/45/16, para. 51.

Rights Committee that it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of proceedings in cases involving capital punishment.[38]

77. Noting the source's submissions that the confidentiality of Mr. Pervez's communications with his lawyer cannot be guaranteed, the Working Group recalls that the authorities should respect the privacy and confidentiality of communications between legal counsel and detainees, in conformity with article 14 (3) (b) of the Covenant.[39] According to the Human Rights Committee's general comment No. 32 (2007) a detainee has the right to have prompt access to legal counsel, which means that a lawyer is granted the right to have private communication and meetings with the detainee and to attend all the proceedings without interference or restrictions. The source further submits that Mr. Parvez's transfer from Srinagar to Delhi, while the prosecution's case relates to Kashmir, where Mr. Parvez's defence witnesses are located could also affect his ability to mount an effective defence.

78. In these circumstances, the Working Group finds that Mr. Parvez's right to adequate time and facilities for the preparation of his defence and right to communicate with counsel of his choosing under article 14 (3) (b) of the Covenant, and principles 17 (1) and 18 (1) and (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was violated, as well as his right to equality before courts and tribunals and to a fair trial, pursuant to article 14 (3) (e) of the Covenant.[40]

79. Noting all the above, the Working Group concludes that the violations of Mr. Parvez's right to a fair trial are of such gravity as to give his detention an arbitrary character under category III.

Category V

80. While the source does not allege that Mr. Parvez's detention falls within category V, in the light of its submissions, the Working Group will nonetheless consider if his detention is arbitrary under category V.

81. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention. These include the following: the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, through previous detention; other persons with similarly distinguishing characteristics have also been persecuted; or the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.[41]

82. With regard to these non-cumulative indicators, the Working Group notes a pattern of intimidation against Mr. Parvez, characterized by arrest, detention, harassment, raids and seizure of material. Reportedly, this is also not the first time that Mr. Parvez has been targeted by the authorities. He was allegedly arrested without a warrant and detained in 2016 for 76 days, two days after he was prevented from attending the thirty-third regular session of the Human Rights Council in Geneva.[42] Several human rights experts publicly called for his immediate release, noting that the travel ban and his detention were "a deliberate attempt to obstruct his legitimate human rights activism".[43] In November 2022, the experts called on the

[38] Human Rights Committee, general comment No. 32 (2007), para. 38.

[39] See also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 61 (1); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 18; the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, guideline 8: and the Basic Principles on the Role of Lawyers, principle 15.

[40] Human Rights Committee, general comment No. 32 (2007), para. 39.

[41] A/HRC/36/37, para. 48.

[42] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report on the situation of human rights in Kashmir: developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and general human rights concerns in Azad Jammu and Kashmir and Gilgit-Baltistan", 14 June 2018, para. 89.

[43] "UN experts urge India to release prominent human rights defender detained for over a month", 19 October 2016, available from https://www.ohchr.org/en/2016/10/un-experts-urge-india-release-prominent-human-rights-defender-detained-over-month.

Government of India to end reprisals and intimidation of activists and civil society organizations, including activists like Mr. Parvez, who share information and testimony on human rights violations with United Nations human rights bodies and mechanisms. [44] Reprisals against Mr. Parvez and the Jammu and Kashmir Coalition of Civil Society for cooperating with OHCHR have been noted in three report of the Secretary-General on allegations of reprisals (2020, 2021 and 2022).[45] The source also submits that Mr. Parvez's arrest forms part of a broader attack on the Jammu and Kashmir Coalition of Civil Society and the Association of Parents of the Disappeared Persons as Organisation.

83. In relation to the Unlawful Activities (Prevention) Act, United Nations experts have expressed concern about the use of counter-terrorism legislation as a way to conflate human rights and civil society activities with terrorist activities, noting that, in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to human rights law.[46] The Working Group recalls the source's submission that there are currently at least 29 human rights defenders incarcerated under the Unlawful Activities (Prevention) Act.

84. Furthermore, in the discussion above concerning category II, the Working Group established that Mr. Parvez's detention resulted from the peaceful exercise of his rights under international law. When detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.[47]

85. For these reasons, the Working Group finds that Mr. Parvez was deprived of his liberty on discriminatory grounds, owing to his status as a human rights defender and on the basis of his political or other opinion. His deprivation of liberty violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and was arbitrary under category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

Concluding remarks

86. Mr. Parvez is a longstanding human rights defender who has been advocating for human rights in the Kashmir Valley region, both at a domestic and international level, reportedly since 1996. The Working Group is seriously concerned about the chilling effects of his arrest and prolonged detention on civil society, human rights defenders and journalists in India who are exercising their fundamental rights to freedom of expression, opinion and association in conducting their work.

87. The Working Group would welcome the opportunity to work constructively with the Government to address arbitrary detention, as well as the opportunity to conduct a country visit to India, and looks forward to a positive response to its request for a country visit dated 22 February 2018.

Disposition

88. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Khurram Parvez, being in contravention of articles 2, 7, 9, 11, 19 and 20 of the Universal Declaration of Human Rights and 2, 9, 14, 15, 19,

[44] "One year in detention: United Nations experts demand immediate release of Kashmiri Activist Khurram Parvez", available from https://www.ohchr.org/en/press-releases/2022/11/one-year-detention-un-experts-demand-immediate-release-kashmiri-activist. See also opinion No. 21/2021, para. 96 (activism related to the Adivasi and Dalit communities); and opinions No. 88/2017, No. 91/2020 and No. 80/2021(activism related to the Sikh religious minority).

[45] See A/HRC/45/36, A/HRC/48/28 and A/HRC/51/47.

[46] See IND/ 7/2020, available from https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression/comments-legislation-and-policy; see also Human Rights Council resolution 34/5, para. 12.

[47] See, for example, opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

89. The Working Group requests the Government of India to take the steps necessary to remedy the situation of Mr. Parvez without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

90. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Parvez immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Parvez.

91. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Parvez, and to take appropriate measures against those responsible for the violation of his rights.

92. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case for appropriate action to: (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (b) the Special Rapporteur on the situation of human rights defenders; (c) Special Rapporteur on the rights to freedom of peaceful assembly and of association; and (d) the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

93. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

94. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Parvez has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Parvez;

(c) Whether an investigation has been conducted into the violation of the rights of Mr. Parvez, and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of India with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

95. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

96. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

97. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[48]

[*Adopted on 28 March 2023*]

[48] Human Rights Council resolution 51/8, paras. 6 and 9.